

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3664

Heard in Montreal, Wednesday, 9 April 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Discharge of Conductor Robert Fex.

UNION'S STATEMENT OF ISSUE:

On April 05, 2007, Conductor Fex was required to attend a Company investigation in connection with "circumstances surrounding alleged failure to follow instructions of yard Coordinator, failure to follow instructions of a Supervisor, and delay to train M30131-01 while employed as conductor on train M30131-01 on May 2nd, 2007."

Mr. Fex, subsequent to the investigation, was assessed 30 demerits points. As a result of this assessment of demerit points Mr. Fex was discharged for accumulation of 65 demerits points.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter, was unwarranted but in any event, too severe. The Union is requesting the reinstatement of Mr. Fex without loss of seniority and benefits and compensated for all lost earnings as a result of the discharge. In the alternative, that the disciplined assessed be reduced accordingly in consideration of all the mitigating factors.

The Company disagrees.

FOR THE UNION:

(SGD.) G. J. ETHIER
GENERAL CHAIRPERSON

FOR THE COMPANY

(SGD.) R. A. BOWDEN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

R. A. Bowden	– Manager, Labour Relations, Toronto
B. Hogan	– Manager, Labour Relations, Toronto
G. Nadon	– Assistant Superintendent, N.O.Z.
D. S. Fisher	– Director, Labour Relations, Montreal
D. VanCauwenbergh	– Director, Labour Relations, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
G. Ethier	– General Chairperson, Sault Ste. Marie
R. A. Beatty	– Witness
R. Thompson	– General Chairperson, Edmonton
R. Fex	– Grievor

AWARD OF THE ARBITRATOR

Having regard to the submissions of the parties, the Arbitrator is satisfied that the grievor was deserving of discipline in respect of the events of April 2, 2007. Having regard to the facts, and to the grievor's service, the Arbitrator is of the view that this is an appropriate case for a substitution of penalty, albeit without compensation and subject to conditions with respect to the grievor's ongoing employment.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for any wages and benefits lost, and without loss of seniority. The grievor's return to work shall be subject to conditions to be negotiated between the parties, and failing their agreement, to be determined by the Arbitrator, who retains jurisdiction in that regard.

April 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR